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No. 85-1828

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

DANIEL RHOADES,

*Petitioner,*

*–against–*

ACLI GOVERNMENT SECURITIES, INC.,

*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION

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June 5, 1986

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## COUNTERSTATEMENT OF THE QUESTION PRESENTED

Did the United States Court of Appeals for the Second Circuit correctly uphold the order of the District Court enjoining petitioner Daniel Rhoades from engaging in further harassing litigation against respondent ACLI Government Securities, Inc. and its attorneys based upon a challenge to the subject matter jurisdiction of the district court previously litigated and determined?

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**No. 85-1828**

DANIEL RHOADES

*Petitioner,*

—v.—

ACLI GOVERNMENT SECURITIES, INC.,

*Respondent.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

## RESPONDENT'S BRIEF IN OPPOSITION

Respondent ACLI Government Securities, Inc.[1] ("ACLI") respectfully requests that this Court deny the petition for a writ of certiorari seeking to review the judgment of the Court of Appeals for the Second Circuit entered on February 6, 1986. (A 1-3).[2]

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1 Pursuant to Rule 28.1 of the Court, ACLI Government Securities states that it was formerly a wholly-owned subsidiary of ACLI International, Inc., which presently is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc. and is now called Donaldson, Lufkin & Jenrette Commodities, Inc. On April 2, 1984, ACLI Government Securities was purchased by Kleinwort, Benson, Inc. and its name was thereafter changed to Kleinwort, Benson Goverment Securities, Inc.

2 References in the form "A- " are to pages of the Appendix annexed to the petition.

## STATEMENT OF THE CASE

This petition for certiorari is the latest in an extraordinary proliferation and perpetuation of court proceedings by petitioner Daniel Rhoades ("Rhoades") to prolong an action in which judgment was entered more than three years ago. On May 23, 1983 the United States District Court entered judgment in this action against Rhoades in the sum of $1,285,598.28, together with interest, most of which has not been paid. *ACLI Government Securities, Inc. v. Daniel Rhoades and Milton Braten*, No. 81-2555 (MEL) (S.D.N.Y. May 23, 1983). Since that time, Rhoades has sought persistently to invalidate the judgment by arguing on no less than eleven separate occasions before this Court, the Court of Appeals for the Second Circuit, the District Court, and the Supreme Court of the State of New York, that federal court jurisdiction based upon diversity of citizenship is lacking in this action because allegedly ACLI's principal place of business is not in Chicago, Illinois, but in New York.

### Rhoades' Post-Trial Challenge To Jurisdiction

After the District Court denied Rhoades' initial post-trial motions, Rhoades filed an additional post-trial motion in which he argued for the first time that subject matter jurisdiction based upon diversity of citizenship did not exist because allegedly ACLI's principal place of business was not in Chicago but in New York where Rhoades resides. This argument was rejected by the District Court in an Endorsement Order, dated October 13, 1983. (A 10-12). The fact that ACLI's principal place of business is in Chicago was firmly established by sworn answers, including documentary support, given by ACLI to interrogatories addressed to the issue[3] as well as by the trial testimony of ACLI's personnel.

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3 The interrogatories had been propounded by Rhoades' co-defendant, his sister Norma Rhoades, in a related action brought by ACLI to set aside Rhoades' fraudulent conveyance to his sister of an interest in real property only days after the jury returned its verdict. *ACLI Government Securities Inc. v. Daniel Rhoades and Norma Rhoades*, No. 83-4778 (MEL) (S.D.N.Y. filed June 24, 1983 (answers to interrogatories served September 6, 1983)).

**Rhoades' Appeal And Motion De Novo To The Circuit Court**

Rhoades appealed to the Court of Appeals for the Second Circuit from the District Court's denial of his motion and again argued that ACLI's principal place of business is in New York. (A 7). Rhoades also filed a separate motion *de novo* before the Second Circuit again alleging lack of subject matter jurisdiction on the same grounds. In an order filed March 9, 1984, the Second Circuit, rejected Rhoades' claim and both upheld the District Court's Order and denied the *de novo* motion. (732 F.2d 141 (1984)) (A 7). Rhoades' subsequent applications to the Second Circuit for rehearing and rehearing *en banc* were denied on April 25, 1984.

**Rhoades' Previous Petition For Certiorari**

Rhoades next petitioned this Court for a writ of certiorari, again arguing that ACLI's principal place of business is in New York. The petition was denied on October 1, 1984. (105 S. Ct. 183 (1984)). Even before this Court denied certiorari, however, Rhoades commenced two separate proceedings again attacking federal court diversity jurisdiction.

**Rhoades' State Court Action**

First, Rhoades commenced an action against Curtis, Mallet-Prevost, Colt & Mosle ("Curtis"), ACLI's lawyers, in the Supreme Court of the State of New York. Rhoades alleged that Curtis violated Section 487 of the New York Judiciary Law and sought damages in the amount of $9,975,660. (A 13-32). Rhoades' claim was that federal court subject matter jurisdiction was founded on allegedly false statements made by ACLI's trial counsel concerning the location of ACLI's principal place of business. (A 21-32).

**Rhoades' Rule 60(b) Motion**

Second, on June 23, 1984, and almost simultaneously with Rhoades' state court action, Rhoades again moved in this action before the District Court, this time pursuant to Rule 60(b) for relief from the May 23, 1983 judgment. The motion was based upon the identical claim asserted in the state court action—that subject matter jurisdiction was founded on allegedly false statements by Curtis

concerning the location of ACLI's principal place of business. *ACLI*, No. 81-2555 (motion filed June 29, 1984).

**ACLI's Cross-Motion For An Injunction**

In response to Rhoades' Rule 60(b) motion, ACLI cross-moved for an order pursuant to 28 U.S.C. §2283 staying the New York state court action and enjoining Rhoades from taking any further action which would directly or collaterally challenge the validity of the District Court judgment. (A 5).

**Denial Of The Rule 60(b) Motion, Rhoades' Renewal And Appeal**

By order entered August 3, 1984, the District Court denied Rhoades' Rule 60(b) motion. *ACLI*, No. 81-2555 (August 3, 1984). After the time to move for reconsideration had passed, Rhoades again moved pursuant to Rule 60(b) adding nothing new to his prior motion. Rhoades' renewed motion was denied on February 22, 1985. *ACLI*, No. 81-2555 (February 22, 1985). Rhoades then appealed to the Second Circuit from both the August 3, 1984 order and the February 22, 1985 order. On June 18, 1985, the Second Circuit dismissed both appeals as untimely. *ACLI*, Nos. 85-7240 and 85-7340 (2nd Cir., June 18, 1985).

**The Dismissal And Appeal In Rhoades' State Court Action**

Rhoades' state court action was dismissed on ACLI's motion by judgment entered on December 13, 1984 on the grounds of *res judicata*. (A 8). Rhoades took an appeal from that judgment, which is currently pending in the Appellate Division, First Department of the Supreme Court of the State of New York. (A 8).

**The Orders Appealed From**

By order dated August 7, 1985, the District Court, finding that Rhoades' state court action against Curtis directly challenged the jurisdictional predicate for the District Court judgment, granted ACLI's cross-motion for an injunction pursuant to 28 U.S.C. §2283. (A 3-5). In an Endorsement decision dated July 23, 1985 (A 5-9), the District Court stated:

> In view of the findings of this court and the Court of Appeals on the several occasions in which the matter has been presented to them, the filing of the state litigation constituted a direct challenge to the jurisdiction of the court and to its ability to protect or effectuate its judgments within the meaning of Title 28 U.S.C. §2283.

(A 8).

On February 6, 1986 the Second Circuit affirmed the District Court's order. (A 1-2).

Rhoades seeks a review of the Second Circuit order by asserting that the District Court's order enjoining the state court action pursuant to 28 U.S.C. §2283 was improper because (1) the New York state court action against Curtis for allegedly misrepresenting that ACLI's principal place of business was in Chicago was not an attack upon the federal court judgment and (2) in the event this Court finds that the state court action challenged the federal court judgment, the New York state interest is such that this challenge should be allowed.

Both arguments are devoid of merit. Rhoades' claim in the state court action that ACLI's principal place of business was in New York, and not in Chicago as represented, directly challenges the federal courts' independent findings that ACLI's principal place of business was in Chicago. These findings were made in the face of Rhoades' oft repeated charge of fraud. Obviously, a finding that Curtis falsely represented that ACLI's principal place of business was in Chicago would necessarily lead to the conclusion that there was no basis for diversity jurisdiction. Rhoades' claims that a fraud took place is baseless, has been litigated previously, and invokes no New York state public policy interest.

## REASONS FOR DENYING THE WRIT

## THE SECOND CIRCUIT WAS CORRECT IN UPHOLDING THE DISTRICT COURT ORDER ENJOINING RHOADES FROM COLLATERALLY ATTACKING THE VALIDITY OF ITS JUDGMENTS

28 U.S.C. §2283 provides that a federal court may enjoin state court proceedings "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." A district court's order will be affirmed on appeal absent an abuse of discretion. *See Browning Debenture Holders' Comm. v. DASA Corp.*, 605 F.2d 35 (2nd Cir. 1978).

As the litany of Rhoades' numerous legal proceedings demonstrates, the District Court had more than ample basis for enjoining Rhoades from relitigating in the state court an issue adjudicated by the federal courts.

The Second Circuit and the District Court have held that ACLI's principal place of business is in Chicago, Illinois and this Court has denied certiorari review of this issue. Finding no quarter in the federal courts, Rhoades filed the state court action seeking to challenge this holding under the guise of an action against ACLI's attorneys for fraud in obtaining this holding. Such attempts by one party to harass the other party by commencing another action on the same issues against that other party's attorneys have been enjoined. *See Browning Debenture Holders' Comm. v. DASA Corp.*, 605 F.2d 35.

As the Second Circuit and the District Court have held, any statements or representations made by Curtis to the effect that ACLI's principal place of business is in Chicago, Illinois are unquestionably true. These holdings are not based upon representations of counsel, but rather upon answers to interrogatories sworn to by an officer of ACLI and trial testimony.

Rhoades has had a full and fair opportunity to litigate the issue, indeed he has had several opportunities. Rhoades even has had the opportunity to specifically argue Curtis' fraud in the federal courts. Yet, with each new motion, action, and appeal, Rhoades has failed to supply any substantiation for his invidious claim. Rhoades' claim

is fanciful. No New York state public policy interest to "maintain standards of the legal profession" has been invoked. Accordingly the District Court's order in no way conflicts with the New York state interests.

Rhoades is engaged in an effort to harass ACLI and its counsel by seeking repeatedly to relitigate an issue long since fully adjudicated on the merits. The injunction issued by the District Court and affirmed by the Second Circuit should not be disturbed because it is necessary to protect the integrity of the District Court's judgment and to protect ACLI against being put to the further inconvenience and expense of relitigating the same issues. *Browning Debenture Holders' Comm. v. DASA Corp.*, 605 F.2d at 38-40.

## CONCLUSION

The petition for a writ of certiorari should be denied. Additionally because the question presented by the petition is spurious and because the petition is frivolous, ACLI requests fees incurred in opposing the petition. Supreme Court Rule 49.2; *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980).

Respectfully submitted,

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